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263 NLRB No. 94

D--9156
Anaheim, CA

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

RISOM MARBLE CORPORATION

and

Case 21--CA--21055

MILLMEN AND CABINET MAKERS LOCAL UNION NO. 2172, ORANGE COUNTY DISTRICT COUNCIL OF CARPENTERS, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL--CIO

DECISION AND ORDER

Upon a charge filed on March 1, 1982, by Millmen and Cabinet Makers Local Union No. 2172, Orange County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL--CIO, herein called the Union, and duly served on Risom Marble Corporation, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 21, issued a complaint on April 14, 1982, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and the complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding. Respondent failed to file an answer to the complaint.

On June 28, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on July 2, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent has not filed a response to the Notice To Show Cause and therefore the allegations of the Motion for Summary Judgment stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides:

> The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be found so by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondent specifically states that unless an answer to the complaint is filed by Respondent within 10 days of service thereof ''all of

the allegations in said complaint shall be deemed to be admitted to be true and may be so found by the Board.'' Further, as set forth in the Motion for Summary Judgment submitted by the General Counsel on April 30, 1982, counsel for General Counsel telephonically advised Tim Foley of Respondent's office that Respondent had not filed an answer to the complaint pursuant to Section 102.20 and 102.21 of the Board's Rules and Regulations, Series 8, as amended, and, furthermore, that the General Counsel would file a Motion for Summary Judgment unless such answer was filed. The General Counsel further requested that Tim Foley ask Dorothy Wright, treasurer to Respondent, to inform the General Counsel immediately as to whether Respondent intended to file such answer. As noted above, Respondent has not filed an answer to the complaint, nor did it respond to the Notice To Show Cause.

No good cause to the contrary having been shown, in accordance with the rule set forth above, the allegations of the complaint are deemed to be admitted. Accordingly, we find as true all the allegations in the complaint and grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

Findings of Fact

I. The Business of Respondent

Respondent is and has been at all times material herein a Delaware corporation with a facility in Anaheim, California, where it has been engaged in the manufacture of executive wood office furniture. Respondent annually sells and ships goods and

products valued in excess of $50,000 directly to customers located outside the State of California.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

Millmen and Cabinet Makers Local Unin No. 2172, Orange County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL--CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. The Representation Proceeding

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All production and maintenance employees at Respondent's Anaheim, California location, including production leadmen, shipping and receiving employees, craters, shipping leadmen, and truck drivers; excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

The Union has been the collective-bargaining representative of these employees since at least on or about June 5, 1981. Such recognition has been embodied in successive collective-bargaining agreements between Respondent and the Union, the most recent of which is effective from June 5, 1981, to July 31, 1983. Since the effective date of the agreement, the Union continues to be the exclusive bargaining representative within the meaning of Section

9(a) of the Act of employees in the above-described unit, for the purpose of collective bargaining with respect to wages, hours of employment, and other terms and conditions of employment.

Since on or about September 1, 1981, Respondent has failed and refused, and continues to fail and refuse to forward employees' union dues, withheld from their paychecks, to the Union, as required by the collective-bargaining agreement entered into by the Union and Respondent on or about June 5, 1981.

We find that by the aforesaid conduct, Respondent has, since on or about September 1, 1981, refused and is refusing to bargain collectively with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit. By such refusal, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent, set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist

therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

We have found that Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing, and continuing to fail and refuse, to forward employees' union dues, withheld from their paychecks, to the Union as required by the provisions of the collective-bargaining agreement entered into by the Union and Respondent on or about June 5, 1981. In order to dissipate the effect of these unfair labor practices, we shall order Respondent to reimburse the Union for all union dues which, since September 1, 1981, Respondent has failed and refused to forward to the Union pursuant to the provisions of the collective-bargaining agreement with interest computed thereon in the manner prescribed in Florida Steel Corporation, 231 NLRB 651 (1977).[1]

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

1. Risom Marble Corporation is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Millmen and Cabinet Makers Local Union No. 2172, Orange County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL--CIO, is a labor organization within the meaning of Section 2(5) of the Act.

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[1] See, generally, Isis Plumbing & Heating Co., 138 NLRB 716 (1962).

In accordance with his dissent in Olympic Medical Corporation, 250 NLRB 146 (1980), Member Jenkins would award interest based on the formula set forth therein.

3. All production and maintenance employees at Respondent's Anaheim, California, location, including production leadmen, shipping and receiving employees, craters, shipping leadmen, and truck drivers; excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act, constitute a unit approriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since at least on or about June 5, 1981, the above-named labor organization has been, and now is, the exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By unilaterally, and without notice to the Union, failing and refusing since on or about September 1, 1981, and at all times thereafter to forward employees' union dues, withheld from their paychecks, as required by the above-described collective-bargaining agreement, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Risom Marble Corporation, Anaheim, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Millmen and Cabinet Makers Local Union No. 2172, Orange County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL--CIO, by unilaterally and without notice to the aforesaid Union failing and refusing to forward employees' union dues, withheld from their paychecks for the period from September 1, 1981, pursuant to the collective-bargaining agreement entered into between the Union and Respondent on or about June 5, 1981.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Honor and abide by the terms and conditions of employment provided for in the collective-bargaining agreement with Millmen and Cabinet Makers Local Union No. 2172, Orange County District Council of Carpenters, United Brotherhood of

Carpenters and Joiners of America, AFL--CIO. The appropriate unit for the purpose of collective bargaining is:

> All production and maintenance employees at Respondent's Anaheim, California location, including production leadmen, shipping and receiving employees, craters, shipping leadmen, and truck drivers; excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) Reimburse the Union for employees' union dues, withheld from employee paychecks, pursuant to the collective-bargaining agreement entered into between Respondent and the Union on or about June 5, 1981, in the manner set forth in the section in this Decision entitled ''The Remedy.''

(c) Post at its facility in Anaheim, California, copies of the attached notice marked ''Appendix.''[2] Copies of said notice, on forms provided by the Regional Director for Region 21, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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[2] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

(d) Notify the Regional Director for Region 21, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C. August 24, 1982

John H. Fanning, Member

Howard Jenkins, Jr., Member

Don A. Zimmerman, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively with Millmen and Cabinet Makers Local Union No. 2172, Orange County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL--CIO, by unilaterally and without notice to the Union failing and refusing to forward employees' union dues, withheld from their paychecks, to the Union for the period from September 1, 1981, pursuant to the collective-bargaining agreement entered into between ourselves and the above-named Union on or about June 5, 1981.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

WE WILL honor and abide by the terms and conditions of the collective-bargaining agreement entered into betweeen ourselves and the above-named Union on or about June 5, 1981. The bargaining unit is:

> All production and maintenance employees at the Employer's Anaheim, California location, including production leadmen, shipping and receiving employees, craters, shipping leadmen, and truck drivers; excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL reimburse the Union for employees' union dues, withheld from employee paychecks, pursuant to the above-described collective-bargaining agreement with the above-named Union, plus interest.

RISOM MARBLE CORPORATION

(Employer)

Dated ---------- By ----------
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, City National Bank Building, 24th Floor, 606 South Olive Street, Los Angeles, California 90014, Telephone 213--688--5229.